

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A  
JUDGE, No. 03-14

Case No.: SC 04-1

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**HONORABLE JAMES E. HENSON'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

The Honorable James E. Henson, by and through his undersigned attorney, and pursuant to Rule 12 of the Florida Judicial Qualifications Commission Rules, and Fla. R. Civ. P. 1.510, hereby moves the Chair of the Hearing Panel for an Order granting Partial Summary Judgment in this case, and as grounds therefore states the following:

1. The Florida Judicial Qualifications Commission originally brought formal charges against Judge Henson on January 6, 2004.

2. An Amended Notice of Formal Charges was filed on August 25, 2004.

3. In Count 2, Paragraph 7 of the Amended Notice of Formal Charges (Misconduct While a Lawyer), the JQC alleges that Judge Henson advised Hector Rodriguez, Jr., to flee the jurisdiction.

4. No evidence or testimony has been produced during this case which substantiates this allegation.

5. In Count 2, Paragraphs 8(i), (ii), (iii), (iv), and (v), of the Amended Notice of Formal Charges (Misconduct While a Lawyer), the JQC alleges that Judge Henson provided inadequate representation to Diane Jimenez by failing to (i) properly investigate the case; (ii) hire a private investigator, as promised; (iii) file appropriate motions; (iv) associate other counsel on the case; and (v) return Ms. Jimenez' phone calls.

6. No evidence or testimony has been produced during this case which

substantiates these allegations.

7. Pursuant to FJQCR 12, the Florida Rules of Civil Procedure apply in all hearings before the Judicial Qualifications Commission.

8. Pursuant to Fla. R. Civ. P. 1.510(c), summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file together with affidavits, if any, show that there is no genuine issue as to any material fact. *See Florida Bar v. Miravalle*, 761 So. 2d 1049 (Fla. 2000).

9. As previously asserted, there has been no testimony or evidence adduced during this case which substantiates the allegations made by the JQC in Count 2, Paragraph 7, and Count 2, Paragraphs 8(i), (ii), (iii), (iv), of the Amended Notice of Formal Charges filed against Judge Henson.

10. That Judge Henson has testified in this proceeding under oath that he did not advise Hector Rodriguez to leave the country. See Exhibit "A" attached hereto. Transcript of Judicial Qualifications Commission 6B hearing dated October 10, 2003, Page 6, Line 3 through Page 17, Line 14.

11. Therefore, there is no genuine issue of material fact concerning these allegations, and judgment as a matter of law is appropriate.

12. Accordingly, partial summary judgment in favor of Judge Henson should be granted on the allegations contained in Count 2, Paragraph 7, and Count 2, Paragraphs 8(i), (ii), (iii), (iv), of the Amended Notice of Formal Charges.

WHEREFORE, the Honorable James E. Henson, respectfully requests that the Chair of the Hearing Panel issue an Order granting partial summary judgment in his favor as described above.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by fax/mail delivery this \_\_\_\_ day of September, 2004 to MARK HULSEY, ESQ. and E. LANNY RUSSELL, ESQ., Special Counsel for the Florida Judicial Qualifications Commission, Smith Hulsey & Busey, 225 Water Street, Suite 1800, Jacksonville, Florida 32202 and JOHN R. BERANEK, ESQ., Ausley & McMullen, P.A., 227 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301.

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